

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,

Plaintiff,

vs.

EDWARD SAMUEL PUNDYK, *et al.*,

Defendants.

Case No. 2:16-cv-01196-APG-GWF

**REPORT AND  
RECOMMENDATION**

This matter is before the Court on Plaintiff's Motion for Interpleader (ECF No. 27), filed on October 19, 2016. The Court conducted a scheduling conference in this matter on August 18, 2016. The Court conducted a hearing in this matter on November 22, 2016. This proceeding is referred to the undersigned pursuant to 28 U.S.C. 636(a) and (b) and LR IB 1-3 and 1-4 of the Local Rules of Practice.

**BACKGROUND**

On May 27, 2016, Plaintiff filed its Complaint in Interpleader (ECF No. 1) to distribute the death benefits of the decedent, Delphina Medeiros, pursuant to the Employment Retirement Income Security Act ("ERISA"), 28 U.S.C. § 1335 and Rule 22 of the Federal Rules of Civil Procedure. *See Plaintiff's Motion for Interpleader* (ECF No. 27), pg. 4. Plaintiff issued group life insurance policies that was sponsored by the decedent's employer, Truckee Gaming, LLC. *Id.* At the time of Delphina Medeiros' death, she was a participant in the life insurance plan and was enrolled in life insurance and accidental death and dismemberment coverage in an amount totaling \$12,000.00 in plan benefits. *Id.* at pg. 4.

The decedent died on October 7, 2015 due to gunshot wounds of the chest and upper extremities. *See Complaint*, (ECF No. 1), exhibit 1. The life insurance benefits became payable as of

1 the date of her death. *Id.* at exhibit 2. The plan establishes that the participant has the right to name  
 2 his or her beneficiary. *Id.* The beneficiary designation form named Defendant Edward Samuel  
 3 Pundyk, the decedent's son, as the sole primary beneficiary. *Id.* at exhibit 3. Defendant Edward  
 4 Samuel Pundyk is charged with murder with a deadly weapon in connection to the decedent's death  
 5 and is the defendant in the related criminal matter in the Second Judicial District Court, State of  
 6 Nevada, Washoe County, *State v. Edward Samuel Pundyk*, Case No. CR16-1290. *See Plaintiff's*  
 7 *Motion for Interpleader*, (ECF No. 27), pg. 4. Defendant Edward Samuel Pundyk made a claim for  
 8 group life insurance benefits on January 5, 2016. *See Complaint*, (ECF No. 1), exhibit 4.

9 Pursuant to ERISA, Plaintiff is a fiduciary and must make claim determinations in accordance  
 10 with ERISA and the documents governing the life insurance plan. *See Motion for Interpleader*, (ECF  
 11 No. 27), pg. 5-6. Although Plaintiff represents that it is ready and willing to pay the plan benefits, it  
 12 is unable to determine who is legally entitled to the plan benefits due to conflicting issues of fact and  
 13 law. *See Complaint*, (ECF No. 1), pg. 4-5. Although the decedent designated Edward Samuel  
 14 Pundyk as the beneficiary of the life insurance policy, he is not entitled to the benefits pursuant to  
 15 N.R.S. § 41B.200, if he is convicted for murder of the decedent. His criminal jury trial is scheduled  
 16 to take place on May 30, 2017. The life insurance plan provides that if there is no beneficiary, the  
 17 plan will pay the benefits to one of the following: (a) his estate; (b) his spouse; (c) his parents; (d) his  
 18 children; or (e) his brothers and sisters. Defendant William John Pundyk is the son of the decedent.  
 19 Defendant William D. Flugher is the husband of the decedent. Defendants Antonette Sinai and Joann  
 20 V. Stokes are the sisters of the decedent.

21 Defendants request 1) permission to interplead funds to the Court, 2) dismissal from this case  
 22 and discharge of all potential liability related to interpleaded funds, and 3) reasonable attorney's fees  
 23 and costs incurred in this proceeding.

## 24 DISCUSSION

25 District courts have original jurisdiction over interpleader actions involving \$500 or more in  
 26 controversy if "two or more adverse claimants, of diverse citizenship...are claiming or may claim to  
 27 be entitled to such money or property..." 28 U.S.C. § 1335(a). Rule 22 of the Federal Rules of Civil  
 28 Procedure allows interpleader of disputed funds where a Plaintiff is subject to double or multiple

1 liability. *Perfekt Mktg., LLC v. Luxury Vacation Deals, LLC*, 2015 WL 10012987, at \*2 (D. Nev.  
2 Nov. 16, 2015). The purpose of the interpleader is for the stakeholder to “protect itself against the  
3 problems posed by multiple claimants to a single fund.” *Lee v. W. Coast Life Ins. Co.*, 688 F.3d  
4 1004, 1009 (9th Cir. 2012). An interpleader action typically involves two stages. *Id.* In the first  
5 stage, the district court decides whether the requirements for a rule or statutory interpleader action  
6 have been met by determining if there is a single fund at issue and whether there are adverse  
7 claimants to that fund. *Id.* If the Court finds that the interpleader action has been properly brought, it  
8 then makes a determination of the respective rights of the claimants. *Id.*

9 The Ninth Circuit held that “in order to avail itself of the interpleader remedy, a stakeholder  
10 must have a good faith belief that there are or may be colorable competing claims to the stake.”  
11 *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 894 (9th Cir. 2012). The threshold to  
12 establish good faith is low. *Id.* Although an interpleading stakeholder need not sort out the merits of  
13 conflicting claims as a prerequisite to interpleader, good faith requires a real and reasonable fear of  
14 exposure to double liability or the vexation of conflicting claims. *Id.* Therefore, a cursory analysis of  
15 the merits of this case is required to determine if Plaintiff has a real and reasonable fear of multiple  
16 colorable claims.

17 Plaintiff has a good faith belief that there are multiple potential colorable claims for several  
18 reasons. First, Defendant Edward Samuel Pundyk’s criminal jury trial may impact whether his  
19 beneficiary designation is enforceable. Second, if Defendant Edward Samuel Pundyk’s beneficiary  
20 designation is not enforceable, the language of the life insurance plan does not indicate in what order  
21 the plan benefits are payable to the decedent’s heirs. Third, Defendants William John Pundyk,  
22 William D. Flugher, Atonette Sinai, and Joann V. Stokes filed Answers (ECF No. 9, 23, 25, 26) and  
23 do not agree on who should receive the plan benefits.

24 Plaintiff’s Motion for Interpleader should be granted to permit Plaintiff to deposit the plan  
25 benefit funds into the Court. Pursuant to Local Rule 22-1, the Court recommends that Plaintiff be  
26 discharged from the case. Plaintiff is permitted to file its application for attorneys’ fees and costs  
27 within 30 days from the issuance of this Report and Recommendation. Plaintiff is permitted to  
28 request reasonable attorney’s fees and costs, but the Court does not at this time make a determination

1 as to the amount. Accordingly,

2 **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion for Interpleader (ECF No. 27)  
3 be **granted** to the extent that Plaintiff shall be permitted to deposit the plan benefit funds into Court.

4 **IT IS FURTHER RECOMMENDED** that judgment be entered in favor of Plaintiff that it  
5 has complied with its legal obligations regarding the life insurance proceeds by depositing the funds  
6 into court.

7 **IT IS FURTHER RECOMMENDED** that Plaintiff be permitted to file its application for  
8 attorneys' fees and costs within 30 days of the order adopting this Report and Recommendation.

9 **NOTICE**

10 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
11 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held  
12 that the courts of appeal may determine that an appeal has been waived due to the failure to file  
13 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also  
14 held that (1) failure to file objections within the specified time and (2) failure to properly address and  
15 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal  
16 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.  
17 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

18 DATED this 4th day of January, 2017.

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21 GEORGE FOLEY, JR.  
22 United States Magistrate Judge  
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